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company, sues the Commissioner of Banks in charge of the liquidation proceedings to secure priority over other general creditors. *Held*, in proceedings under the statute for winding up an insolvent bank, the state is not entitled to priority. *Commonwealth v. Allen* (Mass. 1922) 133 N. E. 625.

In the absence of statute, insolvent banking corporations were treated for the purpose of liquidation as any other corporation, and were under the control of courts of equity acting through a receiver. *King v. Pomeroy* (C. C. A. 1903) 121 Fed. 287. However, the problems raised in the liquidation of insolvent banks are of such special character that special legislation has often been provided for the winding up of insolvent banks. See *Van Tuyl v. Robbin* (1913) 80 Misc. 360, 364, 142 N. Y. Supp. 535; Glenn, *Creditors' Rights and Remedies* (1915) § 413. Under such statutes the control of liquidation proceedings is administrative, not judicial. *Washington Nat. Bk. v. Eckels* (C. C. 1893) 57 Fed. 870; see Glenn, *op. cit.* § 411. The receiver under these statutes is not an officer of the court but an administrative officer. *In re Shetwood* (1897) 165 U. S. 443, 17 Sup. Ct. 385. The instant case presents a further difference caused by this special legislation. Though there seems to be no Massachusetts case on the point, the majority rule at common law gives the state preference in the payment of debts of insolvents. *Matter of Carnegie Trust Co.* (1912) 206 N. Y. 390, 99 N. E. 1096; *Central Bk. v. State* (1912) 139 Ga. 54, 76 S. E. 587; *contra*, *Freeholders of Middlesex Co. v. State Bank* (1878) 29 N. J. Eq. 268. The Massachusetts legislature, in previous general insolvency statutes, gave the state priority in express words. Mass. Gen. Laws (1920) c. 216, § 118; c. 206, § 31. Since, in the instant statute, there was no reservation of the state's priority, the legislature's intention apparently was that the state should have none. The court, therefore, refused to follow the rule requiring strict interpretation of statutes in derogation of the common law, and correctly denied to the state its priority in order to carry out the intention of the legislature.

CONSTITUTIONAL LAW—FEDERAL COURTS—STATE STATUTE OUSTING JURISDICTION.—An Arkansas statute provided for the revocation of the authority granted to any company to do business in the state, if it either instituted a suit against a citizen of the state in a federal court or removed a suit brought by or against it in a state court, to a federal court. The appellee, a foreign corporation doing only a domestic business in Arkansas, seeks to enjoin enforcement of the statute. *Held*, for appellee. *Terral v. Burke Construction Co.* (1922) 42 Sup. Ct. 188.

A statute requiring, by way of condition precedent to entering a state, an agreement by a foreign corporation, not necessarily engaged in interstate commerce, that it will not resort to the federal courts, is unconstitutional. *Insurance Company v. Morse* (1874) 87 U. S. 445. But a statute authorizing the revocation of the license of such corporation for removing a suit to a federal court, has been sustained. *Security Mutual Life Ins. Co. v. Prewitt* (1906) 202 U. S. 246, 26 Sup. Ct. 619. The reason given is that the state may exclude a foreign corporation for any reason. See *Security Mutual Life Ins. Co. v. Prewitt*, *supra*, 257. But in a later case, although the complainant was engaged in both interstate and intrastate commerce, the enforcement of a similar statute was enjoined on reasoning applicable to all foreign corporations. *Donald v. Philadelphia & Reading Coal Co.* (1916) 241 U. S. 329, 36 Sup. Ct. 563. The instant case presents squarely the question of the validity of such a statute as applied to a foreign corporation not engaged in interstate commerce. The right to resort to the federal courts is derived from the Constitution while the right to do local business within a state is not. The court found it necessary to emphasize one of these rights. In so doing, it looked past the method which took the form of the exercise of a state privilege,

to the end sought, namely, the destruction of federal rights by the curtailment of the proper jurisdiction of the federal courts.

CONSTITUTIONAL LAW—ILLEGAL CONTRACTS—CLAYTON ACT.—The complainant corporation sells acetylene gas in tanks under an agreement whereby it retains title to the tanks, exchanging filled tanks for those exhausted, without charge except for the contents. The defendant induced the complainant's customers to have the tanks refilled by the defendant in violation of their contract with the complainant. In a proceeding to restrain the defendant from so acting, the defendant contended that the complainant's contracts were in violation of the Clayton Act. *Held*, injunction granted. *Auto Acetylene Light Co. v. Prest-O-Lite Co.* (C. C. A. 6th Cir. 1921) 276 Fed. 537.

The Clayton Act applies only to sales and leases. *Curtis Pub. Co. v. Federal Trade Commission* (C. C. A. 1921) 270 Fed. 881. Under the Act it is illegal to lease goods or supplies on condition that the lessee shall not use supplies of a competitor of the lessor. (1914) 38 Stat. 730, U. S. Comp. Stat. (1916) § 8835c; *United States v. United Shoe Machinery Co.* (D. C. 1920) 264 Fed. 138. The violation complained of was the alleged lease of the tanks with such a condition imposed. But allowing the customer to retain the containers merely as a method of conveying the gas to the customer is not a lease of the tanks. See *Prest-O-Lite Co. v. Ray* (1917) 220 N. Y. 522, 527, 116 N. E. 350. Even if a lease provides that only the lessor's supplies shall be used in connection with it, where keen competition nevertheless flourishes, the Clayton Act is not violated. See *Canfield Oil Co. v. Federal Trade Commission* (C. C. A. 1921) 274 Fed. 571, 573. The holding of the court in the instant case is correct on both grounds. The transactions did not disclose a lease of the tanks, so that the Clayton Act has no application. Furthermore, if there were a lease, the restrictions while within the words of the Act, are outside its spirit as their observance does not sufficiently tend to create a monopoly.

CORPORATIONS—FRAUD IN INDUCING SUBSCRIPTIONS.—In an action by a corporation to collect a stock subscription, the defendant excepted to a refusal to charge, *inter alia*, that if the defendant was induced to sign the subscription list by false and fraudulent representations of Stemmler, a co-subscriber, to the effect that the defendant's name would be scratched off as soon as it had served the purpose of enabling organization, and if Stemmler later became a director and officer of the corporation, the corporation was affected with notice of the fraud and could not recover. *Held*, for the plaintiff; exception overruled, because knowledge of a director is not knowledge of the corporation. *Myrtle Point Mill & Lumber Co. v. Clarke* (Ore. 1922) 203 Pac. 588.

The requested charge was defective in not conclusively specifying Stemmler as a promoter or subscription agent. He might have been an officious party making representations which could not have been charged to the corporation. See *Canal Bank v. Holland* (1850) 5 La. *363, *365. The charge, however, readily lends itself to the interpretation that Stemmler was acting as promoter in securing subscriptions to the corporation, and the court might well have founded their decision more solidly on the merits although treating him as such. *Cf. The Telegraph v. Loetscher* (1904) 127 Iowa 383, 101 N. W. 773. Where an unauthorized agent secures subscriptions for an existing corporation which ratifies and accepts the benefits thereof, the agent's fraud in inducing the contract is a good defense although the corporation is ignorant of the fraud. *Owens v. Boyd Land Co.* (1898) 95 Va. 560, 28 S. E. 950. By the weight of authority the same rule is extended to subscriptions induced by a promoter's fraud prior to incorporation, even though technically there is no principal then existent, and such fraud will be